

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Section 122
Title 14, California Code of Regulations
Re: Commercial Lobster Fishing Permits

- I. Date of Initial Statement of Reasons: November 5, 2002
- II. Date of Pre-adoption Statement of Reasons: January 9, 2003
- III. Date of Final Statement of Reasons: April 16, 2003
- IV. Dates and Locations of Scheduled Hearings:

(a) Notice Hearing: Date: August 2, 2002
 Location: San Luis Obispo, CA

(b) Discussion Hearing/Adoption Hearing:
 Date: February 7, 2003
 Location: Sacramento, CA

- V. Update:

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

At its February 7, 2003 meeting, the Commission adopted option (1), the language that would repeal the lobster permit lottery and the capacity goal of 225.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:

(1) Ronald McNab, lobster fisherman from Wilmington, California submitted a letter dated January 2, 2003. Mr. H.P. Hazelton from Onyx, California submitted Mr. McNab's letter with his signature on the same date. Mr. Russell Dvorak from La Mirada, California submitted Mr. McNab's letter with his signature on January 6, 2003.

Mr. McNab supports the repeal of the lobster permit lottery. He feels lobster permits should be owned by the lobster fisherman and sold at his/her discretion. Fishermen can then sell a complete small business when they

want or need to retire from the fishery. He does not support the repeal of the capacity goal of 225 lobster permits. He feels a cap on the number of lobster permits is in the best interest of the industry. Mr. McNab also recommends that only persons with at least two seasons as a lobster crewmember be allowed to purchase a lobster permit.

Department Response: The Department's goal in repealing the lottery is to review the lobster restricted access fishery and set a new capacity goal that more accurately reflects the status of the resource and the current lobster fishery. The Department also intends to review the permit transferability issue. Without a permit lottery or permit transferability, no new fishermen can enter the fishery. The Department will consider Mr. McNab's recommendation regarding the sale of permits in its future review of the lobster restricted access fishery. However, the proposed regulatory package does not address permit transferability.

Chris Miller, a Santa Barbara lobster fisherman, submitted a letter on January 31, 2003 supporting the moratorium on the lobster permit lottery. He indicated that it would prevent increased participants in the fishery while the Department and the fishermen meet and review the restricted access program. Mr. Miller also reviewed the achievements that the industry and the Department have made in lobster management. He believes there is still much work to be done in the management of this fishery. Modifying the restricted access program to allow for permit transferability will provide an incentive for better stewardship of the resource. More responsibility has to be assumed by the fishermen to create a collaborative management process with Department scientists. Mr. Miller believes that marine reserves play an important role in the future management scheme for this fishery. He also notes that there are distinct regional differences in lobster trap density, and that fishermen assistance will be required to determine the relationship between capacity and trap density.

Department Response: The Department concurs with Mr. Miller's concerns and reasoning with regard to the moratorium and elimination of the capacity goal. Mr. Miller supports his agreement with a detailed outline of how the lobster restricted access program should be reviewed and how lobster management should evolve.

Zeke Grader, Executive Director of the Pacific Coast Federation of Fishermen's Associations, left his oral comments with Mr. Robert Treanor at the February 7, 2003 Commission meeting. Mr. Grader supports the Department proceeding with the industry's request to eliminate the lottery and the capacity goal while the restricted access program is being reviewed in a collaborative process as outlined in Chris Miller's letter of January 31, 2003.

Department Response: Support noted.

Terry Mines, a commercial fisherman from Laguna Beach, provided testimony at the February 7, 2003 Commission meeting. Mr. Mines opposed repealing the lobster permit lottery. He has been in the lottery for seven years to get a lobster permit. The lottery is the only way a person like himself can get into the fishery. He believes there is not a problem with the lobster resource, and this is just a ploy by the current participants to create a monopoly. He suggested the Department consider trap limits on existing permittees.

Department Response: The goal in repealing the lottery is to prevent an increase in effort while the restricted access program is being reviewed and a mechanism for permit transferability is being developed. Transferability is a more desirable method for allowing qualified new participants into the fishery than through a lottery. If transferability were already part of the program, Mr. Mines may have been able to purchase a permit when he wanted to enter the fishery. Although the lobster resource appears to be healthy, there is anecdotal information to suggest that more traps are being used to maintain current catch levels. Trap limits will be considered when the Department reviews the program, which is not the subject of the current rulemaking package.

Karen Reyna, representing the Ocean Conservancy, gave testimony at the February 7, 2003 Commission meeting. She supports the lobster restricted access program and the current proposal to repeal the lottery and capacity goal so that the program can be re-evaluated. She suggested that the lottery could be reinstated if it remains the best tool for allowing new participants in the fishery. She also supports the concepts outlined in Mr. Miller's letter of January 31, 2003.

Department Response: Support noted.

Guy Grundmeier, commercial fisherman, gave testimony at the February 7, 2003 Commission meeting. He believes that any individual, who is willing to invest in a commercial fishery during this period when many fishermen (himself included) are being regulated out of the business, should be able to get into the fishery.

Department Response: The lobster restricted access program already prevents individuals from entering the fishery. The repeal of the lottery is a temporary measure until the review of the fishery takes place and all the methods of entry into the restricted fishery are re-examined.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game
1416 Ninth Street
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulatory Action:

Establish a new fishery capacity goal and a mechanism for transfer of permits that would provide a method to achieve that goal. This alternative was rejected because the Department does not have the staff available to complete this alternative in time to be effective for the 2003-04 lobster season. Additionally, the lobster season opened on October 2, 2002, which means that all the lobster fishermen are out for long hours and are unavailable for consultation or meetings with Department personnel concerning their restricted access program.

Deckhands who assist lobster operators with their trapping activities are required to purchase a lobster crewmember permit. In order to be eligible for the lobster permit lottery, a commercial fisherman must have held a valid, unrevoked lobster crewmember permit in the two immediately preceding license years. This year, 54 lobster crewmembers entered the permit lottery. Individuals in this group of lottery entrants feel strongly that a moratorium on the lottery unjustly deprives them of a limited opportunity to gain access to the fishery as full-fledged participants. To date, 237 lobster operator permits and 181 lobster crewmember permits have been issued. In 2001, there were 246 lobster operator permits and 197 lobster crewmember permits issued. Forty-three applicants entered the lottery for the one new permit available.

It was suggested by several crewmembers that the lottery still be held, but the permits issued be restricted to a certain number of traps or by being nontransferable. This alternative was rejected because the purpose of the moratorium is to prevent an increase in the number of fishermen while the whole program is under review. It is anticipated that trap limits and transferability will be addressed in the amended restricted access program. Allowing a small number of permits to be issued with a different set of restrictions would be difficult to enforce and counterproductive to the

goal of a restricted access program, which is to match the level of effort with the harvestable resource so a sustainable fishery is ensured.

The Department provided an option that would make the regulatory language providing for a lobster permit lottery inoperative for only the next two fishing seasons. The lottery would resume if the program revision is not completed as planned, or if the amended program does not allow for transferability.

(b) No change Alternative:

The no change alternative would likely allow a number of new entrants into the fishery when there is a request to reduce the capacity goal.

(c) Consideration of Alternatives: In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed regulations are not expected to have a significant adverse economic impact on businesses because they would only temporarily delay new entrants into the fishery. Each existing lobster operator permit holder is considered a small business and the proposed regulations would have no impact on them.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

(c) Cost Impacts on a Representative Private Person or Business: No

(d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: No

- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: No
- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: No
- (h) Effect on Housing Costs: No

Updated Informative Digest (Policy Statement Overview)

Existing regulation establishes a capacity goal of 225 lobster operator permits and the procedures for issuance of any new permits which may be available each year. (Section 122, Title 14, CCR)

The proposed amendments would repeal the capacity goal and the procedures for issuance of new lobster permits. This would eliminate the lobster permit lottery while a review of the entire lobster restricted access program takes place.

Alternative language is provided which would make the subsection on the lobster permit lottery and the capacity goal of 225 inoperative between April 1, 2003, and March 31, 2005.

The Commission adopted option (1), the language that would repeal the lobster permit lottery and the capacity goal of 225, at the February 7, 2003 Commission meeting.

§ Section 122. Lobsters, Permits to Take

Subsection (e) and (f) of Section 122, Title 14, CCR are amended as follows:

(e) Number of Permits:

(1) The holder of a valid, unrevoked lobster operator permit from the immediately preceding permit year shall be eligible to purchase a lobster operator permit regardless of the number issued.

~~(2) If the number of lobster operator permits issued pursuant to paragraph (1) is more than 225, the number of new lobster operator permits available for issuance shall be one-tenth the difference between the total number of lobster operator permits issued prior to July 1 of the current license year and the total number of lobster operator permits issued in the immediately preceding license year. If the number of lobster operator permits issued pursuant to paragraph (1) is less than 225, the number of new lobster operator permits available for issuance shall be the difference between the number of lobster operator permits issued and 225.~~

(f) Procedures and Deadline for Permit Renewal.

(1) Applications for renewal of lobster operator permits must be received by the ~~Department~~department or if mailed, postmarked not later than May 31 of each year. Applications presented or postmarked after May 31 and before July 1 will be assessed a \$50 late fee. Applications postmarked or presented after June 30 will not be considered.

~~(2) If any new lobster operator permits are available for issuance as provided in subsection (e)(2), they shall be issued to licensed commercial fishermen who:~~

~~(A) have held a valid, unrevoked lobster crewmember permit in the two immediately preceding license years;~~

~~(B) have held a valid, unrevoked lobster permit in any two of the immediately preceding six permit years.~~

~~(3) Applications for new lobster operator permits must be received by the Department or if mailed, postmarked not later than July 31 of each year, and any application presented or postmarked after this date will not be considered. If there are more applicants for lobster operator permits than there are permits available, a drawing will be held to determine which applicants will be eligible to purchase a permit. Any person who submits more than one application for a new lobster operator permit in any one permit year will be excluded from the drawing. The drawing will be held on the Wednesday nearest to September 9 each year. The selected applicants will have until October 31 to purchase their lobster operator permits.~~

Authority: Sections 8254 and 8259, Fish and Game Code.

Reference: Sections 2365, 7852.2, 8250-8259, 9000-9006 and 9010, Fish and Game Code.